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### The Black Lawyer in Virginia: Reflections Upon a Journey, 1938–1988

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# THE BLACK LAWYER IN VIRGINIA

*Reflections Upon a Journey, 1938-1988*

BY VERYL VICTORIA MILES, GERALD BRUCE LEE AND G. NELSON SMITH, III

**A**s the Virginia State Bar celebrates its 50th anniversary, we have had the great fortune to commemorate this occasion through a series of memorable interviews with several distinguished black members of the bar. These members include Mr. Robert H. Cooley, Jr. of Petersburg; The Honorable James E. Sheffield, former Judge of the Richmond Circuit Court; Mr. William Thomas Mason, Jr. of Norfolk; The Honorable Roland Duke Ealey, Delegate to the General Assembly for Richmond; and The Honorable Willard Douglas, Judge of the Juvenile and Domestic Relations Court of Richmond. Over the past 50 years these men have been vigorous participants and witnesses of the bar's development and growth. Despite the incredibly insistent obstacles they faced in a community once inflicted with the paralyzing ills of

racial segregation and discrimination, they each realized their dreams to become Virginia lawyers. We shall always salute them, and we can only begin to express our appreciation of and gratitude for their stories and insights by sharing them with you in this article.<sup>1</sup>

Each of these men were gracious enough to recall their struggles to become, survive and succeed as Virginia lawyers. They also expressed their views as to how the success of the black Virginia lawyer can be enhanced through the individual efforts of black lawyers in Virginia and concerted support of the Virginia State Bar as it enters the next 50 years. As we considered how each lawyer began his journey to become a Virginia lawyer, we asked them to describe the educational opportunities that were available to them at the time that they began to pursue the legal education

that was necessary to begin their careers.

## **In Pursuit of a Legal Education**

It was not surprising to discover that all of these men are graduates of the Howard University School of Law, graduating from Howard between the years of 1937 and 1963. Prior to 1950, blacks were not admitted to the public law schools in Virginia.<sup>2</sup> Accordingly, they were required to seek a legal education outside of the state. Because of the denial of admission to these black men, and many other black men and women, who became some of the most accomplished lawyers of our time, the Virginia law schools can never claim credit for the legal beginnings of so many talented Virginians.<sup>3</sup>

able to attend Howard, which was known for its excellent civil rights curriculum and talented faculty, which included Charles Houston, William Hastie and Leon A. Ransom.<sup>4</sup> Mr. Roland Duke Ealey graduated from Howard in 1939; he noted that the "main thrust" of the preparation of the law students was civil rights law.<sup>5</sup> He said that when his class graduated, it had a burning desire to change the world and that was utmost in their minds. One of the students that Mr. Ealey recalled having attended Howard at that time was The Honorable Spottswood W. Robinson, III, of the United States Court of Appeals for the District of Columbia, a great champion of civil rights.<sup>6</sup>

Mr. Robert H. Cooley, Jr. graduated from Howard in 1937. He fondly remembered his professors: "They were tough professors who prepared us to go immediately into a possibly hostile courtroom environment directly from law school." According to Mr. Cooley, this kind of education and training was essential. As black lawyers they would have to begin on their own, since there were no opportunities for them at the white law firms and virtually no black law firms to become associated with upon graduation. Mr. Cooley noted that they had to "sink or swim in a sole practice." Not only did Mr. Cooley find his professors to be challenging, but he also had great admiration for the quality law students who attended Howard. He said that many of them came to Howard with master's degrees and were Phi Beta Kappas, and that they came from all over the country. Many of them went on to become judges or to hold other high positions in their respective states. He noted that he was one of a few Southerners—if not the only one—in his class.

Although Mr. Mason entered law school nearly a decade after Messrs. Cooley and Ealey, the opportunities for a legal education in Virginia remained closed. Mr. Mason graduated from Howard in 1950. In his recollections about Howard, he noted that the vast majority of the members of his class were veterans of World War II, the class was comprised of five women and 45 men. According to Mr. Mason, his class represented a significant increase in the enrollment of women at Howard during



*Robert H. Cooley, Jr. of Petersburg receives his 50-year certificate of membership in the Virginia State Bar from 1987-88 VSB President Roderick B. Mathews at the 1988 Annual Meeting.*

that time. He noted that there was only one other person in his class who was a Virginian, and that was Mr. Phillip Walker of Newport News. Mr. Walker went on to serve as a substitute judge for the General District Court of Hampton.

As previously noted, the state law schools of Virginia did not admit black students until 1950. Although blacks



*William T. Mason, Jr. of Norfolk served as president of the Old Dominion Bar Association from 1969 to 1971.*

could apply and be admitted to the University of Virginia at this time, many elected to go elsewhere for their education. This was the decision of Judge Willard Douglas, Jr. He remembered having been a recipient of a state scholarship that was a remnant of the segregated school system in Virginia. This program was administered through Virginia State College, and was designed to provide financial support to blacks who had to attend out-of-state schools in the event that a desired graduate or professional school program was not available at any of the black state colleges.<sup>7</sup> Judge Douglas decided not to apply to the University of Virginia because of the experiences of John Merchant, the first black graduate of the University of Virginia School of Law. Mr. Merchant graduated from the University of Virginia School of Law in 1955 and was the only black student who attended the law school during his years there.<sup>8</sup> After Mr. Merchant described some of the very unpleasant experiences he encountered at the law school, Judge Douglas decided to go to Howard where he knew he would be welcomed and included in all aspects of the law school experience, and would make enduring contacts with

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his fellow classmates. Judge Douglas graduated from Howard in 1960. Judge James Sheffield graduated from Howard in 1963, and similarly, regarded the out-of-state law schools as the only real option for black Virginians who pursued a legal education.

### **The Rough Roads Traveled by the Black Practitioners**

Intrinsic in the hardships faced by these black lawyers and their colleagues were the inadequate or nonexistent employment opportunities that were available to them after graduating from law school and returning to Virginia to practice law. The testimonials of Messrs. Cooley, Sheffield, Mason, Ealey and Douglas were all consistent on this issue. They each stated that there was only one employment option available to the black lawyer, and that was self-employment as a sole practitioner with a practice concentration in the area of civil rights.

Mr. Mason began his legal practice in the 1950s. He said, "There were no blacks employed in a public agency like the commonwealth's attorney's office, or city attorney's office. Likewise, there were no blacks employed by any private employers such as banks, or law firms, white law firms. . . . that was just clear they were not employing you. You could

apply until you were blue in the face." Even in the early 1960s, businesses were still reluctant to include black lawyers in the employment picture. According to Judge Sheffield, "When you came out of law school in the '60s—'63, '64, '65 and shortly thereafter, your only alternative was to go into private practice. The commonwealth's attorney's office was not even an alternative." In order to begin his practice, Judge Sheffield said that he was compelled to purchase and renovate an old laundromat in Richmond and rent out extra office spaces to other professionals. He practiced for ten years prior to his appointment to the Richmond Circuit Court.

As sole practitioners, black lawyers found the task of building a practice was an arduous one. In many instances opposing attorneys, judges, and the legal system in general sought to exclude them. According to Mr. Mason and Judge Sheffield, blacks encountered extreme difficulty to become members of the bar. They both described an unofficial quota against the admittance of blacks into the bar. Mr. Mason noted that during the time he took the bar examination in Virginia this "quota" "had moved up to where two blacks might pass the bar examination at the same time." Yet, ironically, a decade later Judge Sheffield said that the quota had moved back to only allow one black

to pass the bar examination at a time. According to him, this quota literally forced many blacks to alter or deter their interest in practicing law in Virginia. Judge Sheffield recounted his strategy to deal with this obstacle:

Leonard Lambert and I finished in the same law school class at Howard University. We knew at that time that only one black person at a time was passing the Virginia State Bar. Whether or not that was by intent or by coincidence, it was a fact that only one black person that took the Virginia bar would pass that bar. I had a job in Washington, DC at the Department of Justice working in the Attorney General's Honors Program and Leonard did not have a job; so he and I decided that he would take the bar when it was given the first time after we finished law school and I would take it the second time. He took it and passed and was the only black to pass it, and I continued to work in Washington at the Department of Justice and took the DC exam and passed. The next time the bar exam was offered in Richmond, I took it and passed and was the only black to pass it at that time.

Mr. Cooley recalled several other ways in which the legal system attempted to exclude black lawyers. One example was the segregation of blacks in the law library of the Supreme Court in Richmond. The black lawyers were required to sit in a small and separate section of the library. They were able to get the books they needed for their research from the library's general shelves, but would have to return to segregated seating to work. It was this demeaning condition and the refusal of the black lawyers to accept this discriminatory treatment that resulted in the founding of the Old Dominion Bar Association (ODBA) in 1941. Upon formation, the ODBA petitioned the court to discontinue the restricted seating and all other insulting treatment of the black lawyers.

The formation of the ODBA was also necessary because blacks were not accepted into the American Bar Association or very welcomed in any of the bar



*Former Judge James E. Sheffield of Richmond was compelled to begin his law practice in a renovated laundromat during the early 1960s.*



*For his legal education, Judge Willard H. Douglas, Jr. of Richmond chose Howard over UVA, after hearing of John Merchant's unpleasant experiences at UVA Law School.*

associations of Virginia at that time.<sup>9</sup> Although the Virginia State Bar was open to black attorneys when it was organized in 1938, Mr. Ealey recalled that the presence of the black lawyer at the early Annual Meetings was at best tolerated. He said, "I recall so distinctly one occasion, three of us went to a Virginia State Bar meeting at Hotel Chamberlain. . . . Sam Tucker, D. Hale Thompson and myself. We attended business sections, but they were reluctant to let us come to the afternoon cocktail social hour and protest was made and they decided to let us [in] there." Accordingly, the opportunity for professional networking, support, comradeship and activism for black lawyers was found in the ODBA.

Mr. Cooley also described the way that the system equated blacks with incompetence:

My part of Virginia was the Fourth Congressional District in which black lawyers were few in number and not particularly well received. As a matter of fact, the courthouse officials seemed to have difficulty in perceiving a black lawyer as really being an attorney. When I would cross-examine police officers they would respond so flippantly and indifferently that I actually won because the Com-

monwealth did not prove the case.

During that time local newspapers assiduously published the court news, always including the names of plaintiffs, defendants, judges and attorneys. Well, I was winning so many cases that something happened to cause the local press to slow down on publishing the attorneys' names.

Unfortunately for the black lawyer during this era, there were other obstacles that had to be faced. The black lawyer had the magnanimous task of reversing a long-standing discriminatory bias towards them. What made this task so difficult was the fact that black lawyers were attempting to change an entire system that prided itself so much on the tradition and preservation of the "Old South." Mr. Mason recalls his first real exposure to the courts in Virginia, and to him it was a very bitter lesson. He was not a lawyer at that time, but had just graduated from law school. His friend J. Hugo Madison was representing a group of black women who were charged with trespassing and violating the Virginia Right to Work Law. Mr. Mason accompanied Mr. Madison to court on the day the case went to trial. The courtroom in which the case was tried was segregat-

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ed. In his recollection of the incident he stated:

There had been an effort to organize the oyster shuckers in the community. All the oyster shuckers were black and most of them were women. They struck several oyster houses to win union recognition and to gain a decent contract. I think that they were being paid 15 cents a quart. . . . Terrible wages. . . . they attempted to persuade people who were not on strike to come out and join them, and the owners of the oyster shucking business charged them with trespassing and with violating the Virginia Right to Work Law. These were misdemeanors and they were convicted in the County [District] Court. There was an appeal to the Circuit Court and in due time that appeal was heard and again they were convicted by an all white jury and they got 12 months in jail and a \$250 fine.

Black lawyers knew they were being treated discriminatorily as the subtleties of the courts' practices became obvious.



*Hon. Roland Duke Ealey, General Assembly Delegate for Richmond, and his fellow Howard '39 graduates had "a burning desire to change the world."*

According to Mr. Ealey, "It was so often said that many of the judges were neutral, but you could tell they weren't when they would say, speaking to the white lawyers, 'Well, John, about so and so,' but when they got to you, they would say, 'Mr. Ealey, what do you think?' You could see the difference in the tone of the voice what was going on." Judge Sheffield's reflections were probably repre-

sentative of most black lawyers during this time:

When I started practicing law, . . . the biggest problem you usually had was the hassle from the white judge on a racial basis before you could get into the law. You always had this problem of racism. . . . I can remember some court sessions very vividly in my mind—going in with a client wondering if you were going to be held in contempt of court that day, for something a judge was going to say to you. I used to worry about that. When I walked in, I would wonder, is this the day I am going to jail?

All of this systematic discrimination had a dramatic effect not only on the black lawyer, but it also had an impact on the black client that he hoped to represent. Many of the prospective clients believed that they would face stiffer jail sentences, fines, and public ridicule if they went to a black lawyer. Thus, many hired white lawyers. As stated by Mr. Ealey:

I admit it was a very gruesome thing building a practice. I can recall very distinctly one of the judges called me in his chambers after I tried a case; I thought I did a pretty good job. He said, "Roland, can I ask you a question? . . . [Y]ou come prepared to court and do a good job, and I just wonder why your folk [do] not use you more often." I stated it was because they thought the Caucasians had more influence with the courts than we did.

Even when the black lawyers and organizations such as the NAACP attempted to offer representation to poor clients or to encourage the citizenry to attack the racial discrimination that pervaded their society, they faced obstacles from the organized bar and the legislature. An example of such interference was reflected in *Tucker v. District Committee*.<sup>10</sup> In this case the late Otto Lee Tucker, a respected lawyer and civil rights activist, was reprimanded by the State Bar for attempting to represent an



*(L-R) W. Lester Banks and attorneys S. W. Tucker, Ruth Charity, Charles M. L. Mangum and Jack Greenburg combined business with fellowship at an NAACP conference in the 1960s.*

## About the Authors



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**Miles**

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**Smith**

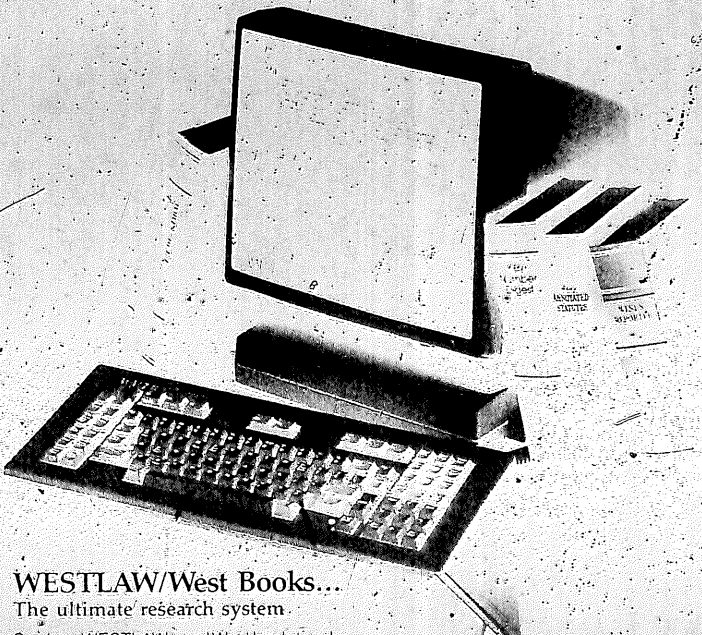
*Mr. Smith is an associate with Raby & Stafford in Alexandria. He received his JD degree from the University of Virginia in 1986 and is a magna cum laude graduate of Howard University. He is the 18th Judicial Circuit Representative to the Young Lawyers Conference of the Virginia State Bar and serves on the Board of Directors of Legal Services of Northern Virginia.*

individual who did not have an attorney and was unable to afford one. The Virginia Supreme Court held that Mr. Tucker had engaged in improper solicitation of professional employment in violation of the Virginia Code and Canons of Professional Ethics. Other cases that demonstrate such interference and resistance include: *NAACP v. Committee on the Offenses Against the Administration of Justice*; *NAACP v. Harrison*; and *Scull v. Commonwealth of Virginia*.<sup>11</sup> Thus, it seemed as though each time the black attorneys attempted to take one step forward, they seemed to be forced to take two steps backward.

### Paving the Way to Political and Judicial Inclusion of the Black Lawyer in Virginia


The key to success in increasing the employment opportunities for black lawyers came as a result of hard work and perseverance of groups such as the Old Dominion Bar Association, the NAACP and the black law firm of Hill, Tucker & Marsh of Richmond.<sup>12</sup> These were organizations that continuously fought in the political and judicial arenas to help black lawyers obtain recognition and respect from their white peers. Yet, even facing what seemed to be insurmountable odds, black lawyers were nevertheless willing to fight for change, and they were successful. As Mr. Mason stated, "A number of lawyers were participating actively in civil rights cases and they were winning these cases and they were winning them against competent lawyers who were white. They were beating state lawyers, private lawyers, beating them with their own weapons. There is

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